

CRETE CARRIER CORPORATION, )  
)  
Plaintiff, )  
)  
vs. )  
) No. 1:13-cv-00081-LJM-TAB  
EDWARD M. STACHOWIAK, )  
MARK D. KUDELA, )  
MID-STATE CARTAGE, INC., )  
)  
Defendants. )

Plaintiff Crete Carrier Corporation filed a motion to amend its complaint and initial disclosures to include claims under Nebraska law, which permits recovery in excess of actual damages. Defendants object to the amendment arguing that Plaintiff's motion is untimely, prejudicial, and futile. For the reasons set forth below, Plaintiff's motion for leave to amend its complaint and initial disclosures [[Filing No. 43](#)] is granted.

The Court should freely grant leave to a party to amend its pleadings when justice so requires. [Fed. R. Civ. P. 15\(a\)\(2\)](#). However, when a party submits its motion to amend after the applicable deadline for amending the pleadings, the party must demonstrate good cause to amend.<sup>1</sup> [Fed. R. Civ. P. 16\(b\)\(4\)](#). Good cause under Rule 16 considers the diligence of the moving party. *Trustmark Ins. Co. v. General & Cologne Life Re of America*, 424 F.3d 542, 553

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[\(7th Cir. 2005\)](#). Once the moving party establishes good cause, the Court applies Rule 15's liberal standard. [\*Shadeland Station Apartments I, LLC v. Realsource Brokerage Services, L.C.\*, No. 1:09-cv-629-WTL-TAB, 2011 WL 1769012, at \\*1 \(S.D. Ind. May 5, 2011\)](#).

The Court ordered a June 14, 2013, deadline for filing motions to amend the pleadings. Seven months after the deadline to amend the pleadings, Plaintiff submitted its motion for leave to amend to include Nebraska Revised Statute 48-118 as a basis for damages. Plaintiff asserts that it originally limited recovery to actual damages in an effort to settle the case. Now that settlement is unlikely, Plaintiff requests leave to amend in an effort to seek all available damages. During settlement discussions, Plaintiff notified Defendants of its intention to seek recovery of all damages in the event settlement was unsuccessful. Defendants assert that Plaintiff does not demonstrate good cause because it knew about the Nebraska statute but choose not to pursue a claim earlier so that it could obtain settlement more easily. The Court will not deny a motion to amend merely because a party focused its efforts on settlement instead of litigation. Settlement is an efficient and effective approach to resolve disputes, and parties that focus early efforts on settlement should not be penalized for doing so. Moreover, Plaintiff notified Defendants of its intention to include claims under Nebraska law if settlement was unsuccessful and filed its motion less than a week after the settlement conference. For the purposes of Rule 16(b), Plaintiff demonstrates good cause.

Defendants argue that the motion is futile because Nebraska law is not applicable. A quick review of the facts suggests Nebraska law may be relevant going forward. Plaintiff's principal place of business is located in Nebraska. David Baker, who was driving Plaintiff's vehicle at the time of the accident and is central to this litigation, filed his workers compensation

claim in Nebraska. Given the facts, a reasonable probability exists that Nebraska law is relevant. Thus, amending the complaint to include a claim under the Nebraska statute is not futile.

Defendants argue that they will be prejudiced by such amendments, given that the dispositive motion deadline has passed.<sup>2</sup> The fact that the dispositive motion deadline has passed supports Defendants' prejudice argument. However, such prejudice is mitigated somewhat given that the Court will need to address the application of Nebraska law at some point during the course of litigation.<sup>3</sup> Defendants assert that they are further prejudiced given that Baker is not a party. This argument is not convincing. Baker recently voluntarily appeared in Florida for his deposition and, according to Plaintiff's counsel, will attend the trial. It is not entirely clear that Baker will voluntarily turn over to Defendants his relevant medical documents, but the record suggests Defendants' request for such documents was overbroad. [[Filing No. 63.](#)]

When justice so requires, the Court must freely grant leave to amend. Thus, Plaintiff's motion for leave to amend its complaint and initial disclosure [[Filing No. 43](#)] is granted. The amended complaint and the amended initial disclosures attached [[Filing No. 43-1](#); [Filing No. 43-2](#)] are deemed filed as of the date of this order.

Date: \_\_\_\_\_

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<sup>2</sup> Defendant Mark D. Kudela filed a motion for summary judgment asserting Indiana law does not apply to the case, to which Plaintiff has not yet responded. Given that the Court is granting Plaintiff's motion to amend, the Court will have an opportunity in its order on summary judgment to address whether Nebraska law applies. Thus, prejudice to Defendants is minimized.

<sup>3</sup> To minimize prejudice, Defendants can seek to modify the CMP dispositive motion deadline.

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